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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,781	03/31/2004	James Lee Gardiner	CC-3643	5225
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EXAMINER				
SMALLEY, JAMES N				
ART UNIT		PAPER NUMBER		
3781				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,781

Applicant(s)

GARDINER, JAMES LEE

Examiner

JAMES N. SMALLEY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-20 and 23-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-12, 15-20, 23-26 and 30-33 is/are rejected.
- 7) ☒ Claim(s) 13, 14 and 27-29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 10-12, 15-16, 22-25 and 30-31 is withdrawn in view of the newly discovered reference(s) to Sheafe, III US 3,704,805, Chiodo US 5,934,495 and Eberhart US 4,749,100. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-8, 11-12, 15-20, 24, 26 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheafe, III US 3,704,805 in view of Eberhart US 4,749,100 and in view of Chiodo US 5,934,495.

Examiner notes Eberhart '100 was published June 7, 1988, which is well before Applicant's earliest priority date of November 12, 1997. Chiodo '495 is a continuation of an application which was filed on March 2, 1995. Sheafe '805 was published in December 1972.

Sheafe '805 teaches a cap member (12) with a pull tab (16), score (14) defining an opening, an annular groove (20) and a peripheral curl for attaching to a hollow body member (11). Concave portion (18) will permit excess fluid to drain back into the drink opening.

The reference fails to teach a filler material covering the groove.

Eberhart '100 teaches a removable sanitary lid (22) for beverage cans, comprising flange (26), sheet (24) and a portion intermediate the flange and sheet which is unlabeled, but located at (20) which fills the groove.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the sanitary lid of Eberhart '100 to the beverage can of Sheafe '805, motivated by the

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benefit of preventing contaminants from collecting on the top surface of the can before a user first drinks from the container.

Eberhart '100 fails to teach the material permitting the end wall of the beverage can on which it is disposed to be exposed. However, the reference does teach in column 2, lines 27-30, that the lid should be formed of "plastics" or "biodegradable material" so long as the material is flexible.

Chiodo '495 teaches a protective cover for drink cans, and teaches in column 2, lines 20-24 that the lid be formed preferably of a transparent biodegradable plastic. Because the plastic taught therein is transparent, the center panel of a beverage can on which a cover, such as that of Eberhart '100 is disposed, although completely covered over, is "exposed" to light, much the same as a person standing in a window is "covered" by the window, but it still "exposed".

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sanitary cover of Eberhart '100, forming it of the biodegradable thermoplastic taught by Chiodo '495, which is transparent, motivated by the benefit of allowing a user to be able to visually inspect the surface of the can of Sheafe '805 to see if there is any dirt or particles on the surface. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 3, the cap could be unfolded from the container body at seam (13) and is thus read to be "removable".

Regarding claim 4, Examiner notes Sheafe '805, figure 6, whereby it can be seen the center point of the cap (located at the unlabeled rivet) is higher than a peripheral portion adjacent the rim/annular groove (20).

Regarding claim 11, Examiner reads the term "fixed" to be held in place. Examiner notes the forces of friction between the groove and the sealing member, such as seen in Eberhart '100, figure 6, will hold the filling member firmly in place on the beverage can of Sheafe '805.

Regarding claims 15-16 and 30-31, the "suction portion" is read to be the smooth outer surface, which is shown in figure 6 to wedge itself into an associated container countersink, which will force out

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extra air and thus create an inherent vacuum force which would hold the member to the surface of the can.

Regarding claims 17-18, figure 6 shows the cover will extend radially inwardly from the countersink at (24), and is at about the same level as the center panel, since the bottom surface of the cover is flush with the top surface of the can.

Regarding claim 26, the claim depends from claim 2, which limits the cap for use on a can. Thus, the cap must only be capable of being used in the intended manner, i.e. it must only be capable of being applied to a can such that there will be mechanical deformation. In the instant case, the cap could be applied to can with a countersink which is narrower than the channel-fitting portion (20) such that it will be compressed in upon itself, thus comprising a mechanical deformation.

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheafe, III US 3,704,805 in view of Eberhart US 4,749,100 and in view of Chiodo US 5,934,495, as applied above to claim 1, and further in view of Strube et al. US 6,202,880.

Examiner notes Strube '880 was published on April 3, 1997 which is before Applicant's earliest priority date of November 12, 1997.

Strube '880 teaches in column 3, lines 25-28, that the can end is "stiffened by usual ribs 5a or beads 5d or two-dimensional deformation(s) 5b."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply stiffening ribs to the end wall of the can of Sheafe '805, as taught by Strube '880, motivated by the benefit of reinforcing the end wall from internal pressures.

5. Claims 10, 12, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheafe, III US 3,704,805 in view of Eberhart US 4,749,100 and in view of Chiodo US 5,934,495 as applied above to claims 1 and 11, and further in view of Labbe US 5,647,497.

Examiner notes Labbe '497 was filed on February 21, 1996, before Applicant's earliest priority date of November 12, 1997.

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Eberhart '100, as modified above, teaches all limitations substantially as claimed but fails to teach the filler material comprising an adhesive material. Instead, the device is held to the can end by an annular bead 926 which snaps over the can folded edge (18).

Labbe '497 teaches a variety of covers for beverage can ends, and notes in column 4, lines 38-43 that "it is believed to be within the skill of one of ordinary skill in the art to select a glue or other adhering substance capable of adhering the piece (24) of sheet material to the outer surface (15) while enabling easy removal of the piece (24) from the top wall (14)."

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Eberhart '100, replacing the annular snap band and affixing it to a beverage can end with a glue or other adhering substance, as taught by Labbe '497, motivated by the benefit of reducing the overall amount of material used in forming the cap.

Regarding the location of the adhesive being in the countersink, Examiner notes that although Labbe '497 teaches the adhesive being applied to the outer surface (15), it would be obvious to apply the glue to the countersink portion as well, because the seal of Eberhart '100 is designed to seal within the countersink.

Allowable Subject Matter

6. Claims 13-14 and 27-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 1-33 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See attached PTO-892 citing relevant references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James N Smalley/
Examiner, Art Unit 3781

/Anthony D Stashick/
Anthony Stashick
Supervisory Patent Examiner, Art Unit 3781